

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7208

BILL NUMBER: SB 311

NOTE PREPARED: Mar 28, 2007

BILL AMENDED: Mar 27, 2007

SUBJECT: Placement of Alleged Child in Need of Services (CHINS).

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR: Rep. Welch

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: No Fiscal Impact

Summary of Legislation: (Amended) This bill provides that if the Department of Child Services determines that: (1) a child is a child in need of services; and (2) the child would be protected in the child's residence by the removal of the alleged perpetrator of child abuse or neglect; the Department may file a petition to remove the alleged perpetrator from the child's residence instead of attempting to remove the child from the child's residence. The bill allows a court to issue a temporary restraining order in an action by the Department for the removal of the alleged perpetrator of child abuse or neglect. The bill also requires a court to hold a hearing within 48 hours of issuing the order. It allows the court, after notice and a hearing, to issue a child protective order if certain conditions are met. It also makes it a Class A misdemeanor for: (1) a parent or other adult with whom a child continues to reside after the issuance of a temporary restraining order to knowingly or intentionally fail to comply with the requirements of the order; or (2) for an alleged perpetrator of child abuse to knowingly or intentionally return to a child's residence in violation of an order.

This bill requires a court to consider placing a child with a de facto custodian or stepparent before considering an out-of-home placement when a child alleged to be a child in need of services is taken into custody.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *De Facto Custodian and Stepparent Placements:* This bill adds a de facto custodian and a stepparent to the list of placements which a court must consider prior to placing a child who is alleged to be a child in need of services in any other out-of-home placement. Currently, the court must consider a suitable and willing blood or an adoptive relative caretaker, including a grandparent, aunt, uncle, or adult sibling. Under the bill, the Department of Child Services (DCS) would be required to complete a

home study of the stepparent or de facto custodian's home and provide the court with a placement recommendation prior to placing a child.

The DCS reports that the courts currently place children with de facto custodians and stepparents. In addition, the DCS currently requires a home study be conducted when placing a child in either type of placement. No additional expenditures are anticipated as a result.

(Revised) *Temporary Restraining Order Against an Alleged Perpetrator*: The bill allows the DCS to file a petition for a temporary restraining order to remove an alleged perpetrator from a child's residence instead of removing the child from the child's residence. The court would then be required to hold a hearing on a temporary child protective order within 48 hours of its issuance at which time a permanent child protective order could be ordered by the court should the child meet certain criteria presented on the DCS' petition. The court would also be required to maintain paperwork pertaining to an order and forward it to the appropriate entities. As proposed, administrative duties and costs for the courts would increase. In addition, administrative duties for the DCS would increase as well. Actual increases are unknown and are dependent on the number of petitions filed.

(Revised) *Division of State Court Administration*: The bill requires the Division of State Court Administration to develop and adopt forms relating to child protective orders. It also requires the Division to modify the statement printed on an order for protection, a no contact order, a workplace violence restraining order, or child protective order (as is specified under the bill). The Division should be able to complete the aforementioned responsibilities within its existing level of resources.

Penalty Provision: The bill makes is a Class A misdemeanor: (1) for a parent or other adult with whom a child continues to reside after the issuance of a temporary restraining order for removal of an alleged perpetrator to knowingly or intentionally fail to monitor the residence and report to the DCS and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the child's residence; (2) for an alleged perpetrator to knowingly or intentionally return to a child's residence in violation of a temporary restraining order.

However, the offense under (2) is a Class D felony if the alleged perpetrator has a prior unrelated conviction under the bill.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Penalty Provision*: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000, and the fine is \$10,000 for a Class D felony. However, any additional revenue would likely be small.

Explanation of Local Expenditures: (Revised) *Temporary Restraining Order Against an Alleged Perpetrator*: As proposed, counties could experience a decrease in expenditures. Children that would have previously been placed in out-of-home placements could remain in the home instead. Costs for out-of-home

placements vary and are paid for by a county out of the county Family and Children Fund. Any decrease in expenditures would depend on the number of children who are not placed in an out-of-home placement and the daily cost for that placement.

The provision could increase administrative duties for sheriffs and local law enforcement agencies. Both would be responsible for maintaining information pertaining to an order and complying with certain statutory requirements. For example, entering the information from an order into the Indiana Data and Communication System. Actual increases in administrative duties are unknown and are dependent on the number of petitions filed.

Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small. A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Department of Correction; Department of Child Services; Division of State Court Administration.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Cassandra Porter, DCS; James Payne, DCS; John Ryan, Department of Child Services; Doug Gosser, Indiana Sheriffs' Association.

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